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January 19, 1993

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ADMITTED IN D.C. ONLY

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

OUR FILE NO.
0200-130-63

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
Washington, D.C. 20554

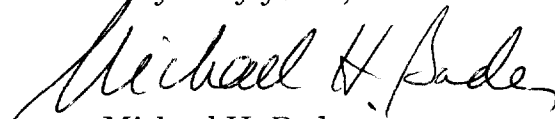
Re: MM Docket No. 92-259

Dear Ms. Searcy:

On behalf of TV 14, Inc., licensee of WTLK-TV, Rome-Atlanta, Georgia, I transmit herewith, for filing and distribution to the Commissioners, an original and nine copies of its Reply Comments in connection with the above-referenced proceeding.

Kindly communicate any questions concerning this matter directly to this office.

Very truly yours,



Michael H. Bader

MHB/app

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Before The
Federal Communications Commission
Washington, D.C. 20554

JAN 19 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In The Matter Of)
)
Implementation of the Cable) MM Docket No. 92-259
Television Consumer Protection)
and Competition Act of 1992)
)
Broadcast Signal Carriage Issues)

TO: The Commission, *en banc*

REPLY COMMENTS
OF
TV 14, INC. (WTLK-TV)
ROME-ATLANTA, GEORGIA

TV 14, Inc., ("WTLK-TV"), by its attorneys, hereby replies to the comments of various other parties who filed in answer to the FCC's NPRM (FCC 92-499, Nov. 19, 1992) regarding Broadcast Signal Carriage Issues. The NPRM seeks public comment on how the FCC should implement the recent Cable Act mandate that cable systems carry local TV stations.

INTRODUCTORY STATEMENT

This reply is filed by a local TV station which, so far, has been denied cable carriage.

TV 14, Inc. operates WTLK-TV, Channel 14, in the Rome-Atlanta market. The station is a high-power, state-of-the-art, facility which has endeavored to bring to the market high quality, unique television program service, with particular dedication to the service needs of the minority population of the area. For some time, WTLK-TV has been frustrated by the refusal of Atlanta's cable systems to carry it, despite the

fact that the station provides city grade service over Atlanta. Their expressed refusals have uniformly been based principally on cable copyright issues. They aver that carriage of WTLK-TV, licensed as it is to Rome, would impose undue copyright liability on them. Without question, copyright concerns (real or imaginary) have stymied the efforts of various television stations to present their programs to the public. But there are other factors behind the cable stonewalling.

As Congress observed in the Cable Act, cable systems have . selfish economic interests to protect ("shall we carry the local station or a pay channel such as Cartoons?"), and it is the experience of WTLK-TV that often such a vacuous pay channel (perhaps "Skin Flick") will appear on the cable system rather than a local station such as WTLK-TV.

Congress has recognized the problem, and so has the Commission. The instant proceeding would bring up-to-date and clarify the FCC's rules which prescribe and govern both for cable systems and television stations their rights, obligations and liabilities for carrying out the national policy to present to the public the greatest opportunity to receive television services. That means local television stations, not girly pay cable programs, have precedence under the law on cable carriage.

TV 14, Inc. salutes the purpose and content of the Cable Act and the Commission's Proposed Rules, especially the following basic matters:

As Congress put it,

"...the Federal Government has a substantial interest in having cable systems carry the signals of local commercial television stations. . . ."¹

"Broadcast television stations continue to be an important source of local news and public affairs programming and other local broadcast services critical to an informed electorate."²

"Consumers who subscribe to cable television often do so to obtain local broadcast signals which they otherwise would not be able to receive. . . . Most subscribers to cable television system do not or cannot maintain antennas to receive television services. . . ."³

And as the FCC has said in its proposed rules to carry out the congressional mandate,

"...Congress has determined that. . . must-carry. . . [is] necessary to promote competition in local markets,"⁴

and thus the Commission seeks public comment on how the must-carry provisions of the Cable Act should be incorporated into the Commission's rules."

TV 14'S REPLIES

The comments of other interested parties as they affect WTLK-TV fall into three categories:

1. Those which support the statutory requirements and seek to provide a sound regulatory basis for ensuring the greatest cable carriage of local television stations,

¹ Cable Television Consumer Protection and Competition Act of 1992, Public Law No. 102-385, 106 Stat. 1460 (1992), Section 2(9). ("Cable Act").

² Cable Act, Section 2(11).

³ Cable Act, Section 2(17).

⁴ NPRM, paragraph 4.

2. Those which seek to frustrate or impede the articulation of a workable regulatory basis for ensuring the greatest cable carriage of local television stations, and

3. Those which address collateral, but vital, issues such as the impact on the enforcement of the United States Copyright laws.

The first of these is typified by the Comments of Association of Independent Television Stations ("INTV"). The INTV paper is a cogent and detailed exposition of the views of many stations in the nation, several of which are situated similarly to WTLK-TV, and it concentrates on the must-carry issue. Thus, its first point of discussion strongly presents the view that:

"Regardless of the 'legal' location of a cable system, the system should be required to provide every subscriber home in a particular market ("ADI") all local signals from that market."⁵

That premise ought to be beyond debate, in view of the Cable Act's firm and clear declaration that the national interest is in cable carriage of all local stations.

Nevertheless, certain cable interests ask the Commission to water down its regulations so as to frustrate and impede the achievement of the Congressional mandate. Tel-Comm Cable is a good example of this. Tel-Comm would have the Commission adopt rules requiring each station to prove that it "deserves" to be carried.⁶ This sounds like a communications lawyer's dream: Dozens of "hearings" would be held on how "deserving" a station is of cable carriage. The frightening image of

⁵ INTV, p.3.

⁶ Tel-Comm Cable Comments.

program-type hearings is presented. Next, the Tel-Comm proposal would become a station's nightmare as the determination of "deserved status" would go to court. In the meantime, the public would not receive the station, and it would very likely die.

The views of the INTV proponents of carriage, when compared to the obstructionists who would water down the Cable Act, bring into sharp focus the main issue:

**WILL THE FCC RULES CARRY OUT
THE CABLE ACT MANDATE FOR
FULL LOCAL COVERAGE?**

The experiences of WTLK-TV illustrate why the Commission should strongly declare itself in strong support of full-local-station-carriage.

WTLK-TV (licensed to Rome) covers Atlanta with a city grade signal. The Atlanta stations cover Rome. The market is called Atlanta-Rome. The Atlanta stations are carried on the Rome system. Nevertheless, WTLK-TV is consistently denied cable carriage in Atlanta.

For two years the Commission has been seeking to serve the public and help WTLK-TV, under the present rules. In TV 14, Inc., 6 FCC Rcd. 7234, (1991) the Commission declared that station WTLK-TV is an Atlanta-Rome facility for syndicated exclusivity purposes. In Request by TV 14, Inc. to Amend Section 76.51 of the Commission's Rules to Include Rome, Georgia, in the Atlanta, Georgia, Television Market, FCC 92-536, MM Docket No. 92-295 (1992) the Commission has undertaken to redesignate the market as Atlanta-Rome for all purposes, including carriage. Significantly, in each proceeding the Commission has strongly

supported the basic mandate of the Cable Act that all local stations receive regulatory assistance so that they may appear on local cable. In TV 14, Inc., supra, the Commission commented on its “intention to permit stations servicing the same market area to acquire exclusivity rights against each other.” In Request by TV 14, the Commission is trying to close the loop so that all stations may be competitive on cable.

For the Commission to back off from the proposal undertaken in the Rome-Atlanta proceedings would be wholly inconsistent with the mandate of the Cable Act.

Nevertheless, some parties would frustrate the Act in this respect.

By contrast to the vigorous enforcement of the Cable Act’s mandatory coverage provision, mandated by Congress, the National Association of Broadcasters--in a strange and cumbersome proposal--would lock the Commission into a three-year cycle for determining which stations would be entitled to must-carry treatment by a local cable system. NAB argues in favor of a “global” answer to the question of how to assure carriage of local stations. The “global” proceeding to fashion the “global” answer would only occur every three years.⁷

We fail to see how NAB’s position squares with the Cable Act’s mandate. We ask, why delay the carriage for some three-year cycle?

WTLK-TV urges the Commission to adopt rules which require in clear, simple terms that local stations will be carried. This issue has been around for years, and to impose on the public a cumbersome

⁷ NAB, p.4.

“global” proceeding to determine what local signals will be carried would clearly be contrary to the public interest.

Finally, we refer to the Comments of the United States Copyright Office. In the NPRM the Commission inquired as to how Copyright implications should be considered in updating its list of markets (Section 76.51).

The Copyright Office is concerned not only as to how the Commission will redesignate markets by adding cities and stations, but how it will rank the redesignated markets, one in relation to each other. The Copyright Office seems to be telegraphing an intent to resist the Commission’s actions, if such renumbering occurs.

We read the Cable Act to be a mandate that the Commission update its list. This flows from the regulatory “Catch 22” which has dogged stations, cable systems, the FCC and the Copyright Office for years. Unfortunately, WTLK-TV has been caught up in the resulting maze, and the inability of the U.S. Government to Act in this maze is truly embarrassing. One need only consider the expression of the Copyright Office in a recent ruling. On May 15, 1992, the Copyright Office considered WTLK-TV’s request for Copyright relief. In denying such relief, the Copyright Office decided to apply its statute (17 U.S.C. Section 111) as written; and that statute referred back to the FCC rules of nearly two decades ago, namely, the April 15, 1976 “must-carry” rules, EVEN THOUGH such rules had been voided by the courts. The Copyright Office commented, somewhat resignedly, that it

"...remains bound to apply this obsolete body of cable carriage requirements. . ."⁸

That type of regulatory frustration must be avoided when the FCC crafts its rules in this proceeding. The Commission, therefore, must redesignate markets clearly, swiftly and as simply as possible.

If in the process, some market renumbering occurs, so be it. Reality, not confusion, must govern this process.

CONCLUSION

The Commission is presented with an opportunity to bring order to a confusing situation as to broadcast signal carriage issues. It has crafted some time ago a process of redesignating markets for cable carriage purposes, and in following precedent, it can respond most effectively to Congress' prodding to action. WTLK-TV urges the Commission to proceed as it has in the current Atlanta-Rome proceeding,⁹ which is premised on the earlier determinations in Television Muscle Shoals¹⁰ (where the record did not call for redesignation) and Orlando Major Market¹¹ (where it did.) This is the

⁸ Letter, May 15, 1992, from Dorothy Schrader to James E. Dunstan.

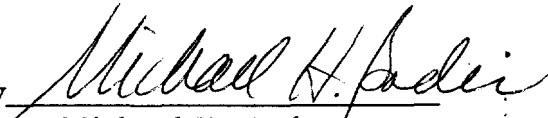
⁹ Request by TV 14, Inc., (FCC 92-536, MM Docket No. 92-295, (1992).

¹⁰ 48 RR 2d 1191 (1981).

¹¹ 3 FCC Rcd. 6171 (1988).

only way the Cable Act mandate as to cable carriage of local stations will be implemented.

Respectfully submitted,
TV 14, INC.

By 
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Its Attorneys

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January 19, 1993